



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0291; FRL-9952-13-Region 9]

Approval of California Air Plan Revisions, Sacramento Metropolitan Air Quality

Management District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District (SMAQMD) and the San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from architectural coatings. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on [Insert date 60 days after date of publication in the Federal Register] without further notice, unless the EPA receives adverse comments by [Insert date 30 days after date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0291 at <http://www.regulations.gov>, or via email to Steckel.Andrew@epa.gov. For comments

submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Arnold Lazarus, EPA Region IX, (415) 972-3024, lazarus.arnold@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State's Submittal

- A. *What rules did the State submit?*

Table 1 lists the rules addressed by this action with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted/Amended	Repealed/Rescinded	Submitted
SDCAPCD	67.0	Architectural Coatings	12/12/01	6/24/15	11/13/15
SDCAPCD	67.0.1	Architectural Coatings	6/24/15	-----	11/13/15
SMAQMD	442	Architectural Coatings	9/24/15	-----	3/11/16

On April 19, 2016, the EPA determined that the submittal for SMAQMD Rule 442 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On January 19, 2016, the EPA determined that the submittals for SDCAPCD Rules 67.0 and 67.0.1 met the completeness criteria.

B. Are there other versions of these rules?

There are no previous versions of Rule 67.0.1 in the SIP. We approved earlier versions of Rule 442 into the SIP on November 9, 1998 (63 FR 60214) and Rule 67.0 on June 20, 2013 (78 FR 37130).

C. What is the purpose of the submitted rules and rule rescission?

VOCs help produce ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Architectural coatings are applied to stationary structures and their accessories. They include house paints, stains, industrial maintenance coatings, traffic coatings, and many other products. VOCs are emitted from the coatings during application and curing, and from the associated solvents used for thinning and clean-up.

SMAQMD Rule 442 controls VOC emissions from architectural coatings by establishing VOC limits on any architectural coating supplied, sold, offered for sale or manufactured for use within the SMAQMD. Rule 442 was revised to align SMAQMD's architectural coatings practices and VOC limits with those contained in CARB's "2007 Suggested Control Measures for Architectural Coatings" (SCM),¹ which are more stringent and make use of newer coating categories than the previous version of Rule 442.

Similarly, SDCAPCD Rule 67.0.1 was adopted to align SDCAPCD's architectural coatings practices and VOC limits with those contained in CARB's SCM. Rule 67.0.1 replaces SDCAPCD Rule 67.0, which was rescinded. SDCAPCD elected to make these changes in a new rule, rather than in revisions to Rule 67.0, "due to the large number of revisions to existing Rule

¹ <http://www.arb.ca.gov/coatings/arch/docs.htm>

67.0 that would be necessary to reflect the 2007 SCM.”²

The EPA’s technical support documents (TSDs) have more information about these rules.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major stationary source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2)). The SMAQMD has been designated as severe nonattainment for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The SDCAPCD regulates an ozone nonattainment area classified as moderate for the 2008 8-Hour Ozone NAAQS (40 CFR 81.305). As addressed further in the TSDs, because there are no relevant EPA CTG documents and because architectural coatings are considered area sources, architectural coating sources are not subject to RACT requirements. However, architectural coating sources are subject to other VOC content limits and control measures described in the TSDs.

² Letter from Robert J. Kard, Air Pollution Control Officer of the SDCAPCD to the San Diego Air Pollution Control Board, June 24, 2015, p3.

Guidance and policy documents that we use to evaluate enforceability, SIP revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” (57 FR 13498, April 16, 1992 and 57 FR 18070, April 28, 1992).
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations” (“the Bluebook,” U.S. EPA, May 25, 1988; revised January 11, 1990).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies” (“the Little Bluebook”, EPA Region 9, August 21, 2001).
4. “Suggested Control Measure for Architectural Coatings,” CARB, October 2007.
5. Code of Federal Regulations (CFR), title 40, part 59, subpart D - National Volatile Organic Compound Emission Standards for Architectural Coatings (40 CFR 59.400 *et seq.*).

B. Do the rules meet the evaluation criteria?

We believe these rules and rule rescission are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA recommendations to further improve the rules.

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules but which are not currently the basis for rule disapproval.

D. Public comment and final action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted

rules and rule rescission because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules and rule rescission. If we receive adverse comments by [**Insert date 30 days after date of publication in the Federal Register**], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [**Insert date 60 days after date of publication in the Federal Register**]. This will incorporate these rules and this rule rescission into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SMAQMD and SDCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60**

days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(255)(i)(A)(7), (c)(354)(i)(F)(4), (c)(472)(i)(C), and (c)(474)(i)(B) to read as follows:

§52.220 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
(255)	*	*	*	
(i)	*	*	*	
(A)	*	*	*	

(7) Previously approved on November 9, 1998, in paragraph (c)(255)(i)(A)(2) of this section and now deleted with replacement in paragraph (c)(474)(i)(B)(I) of this section, Rule 442, adopted on September 5, 1996.

*	*	*	*	*
(354)	*	*	*	
(i)	*	*	*	
(F)	*	*	*	

(4) Previously approved on June 20, 2013, in paragraph (c)(354)(i)(F)(3) of this section and now

deleted without replacement, Rule 67.0, “Architectural Coatings,” adopted on December 12, 2001.

* * * * *

(472) * * *

(i) * * *

(C) San Diego Air Pollution Control District.

(I) Rule 67.0.1, “Architectural Coatings,” adopted on June 24, 2015.

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(474) * * *

(i) * * *

(B) Sacramento Metropolitan Air Quality Management District.

(I) Rule 442, “Architectural Coatings,” amended on September 24, 2015.

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[FR Doc. 2016-23837 Filed: 10/3/2016 8:45 am; Publication Date: 10/4/2016]